Internal Revenue Service

# memorandum

CC:TL-N-3381-89
JMPanitch

date: APR 24 1989

to: District Counsel, Chicago CC:CHI
Attn: William I. Miller

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: Request for Tax Litigation Advice Regarding the [redacted]'s [redacted] Taxable Year

The following analysis responds to your request for Tax Litigation Advice, dated January 31, 1989.

## ISSUE

1. Whether the [redacted] distribution of a portion of the assets of [redacted] to its sole shareholder, the [redacted], constituted proceeds of the sale of the [redacted] stock to an unrelated third party.

2. Whether, absent an actual surrender of shares, the [redacted] distribution of a portion of the assets of [redacted] to its sole shareholder, the [redacted], constitutes a redemption of those shares pursuant to I.R.C. § 317(b).[1]

## CONCLUSION

The [redacted] distribution did not constitute proceeds of the [redacted]'s sale of the [redacted] stock to [redacted]. Furthermore, the Fowler Hosiery constructive redemption theory does not apply outside the context of a partial liquidation. Section 222(c)(1) and (c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 97th Cong., 2nd Sess. (1982) amended section 302(b)(4) to eliminate exchange treatment for asset distributions to corporate shareholders in a partial liquidation. Since the [redacted] is a corporate shareholder, application of Fowler Hosiery would not

[1] Unless otherwise stated, all section references are to the Internal Revenue Code as in effect during the taxable years in issue.

generate exchange treatment, even if some portion of the [redacted] distribution constituted a partial liquidation of [redacted]. Therefore, we would not recommend the determination of a deficiency in the [redacted]'s excise tax.

## DISCUSSION

**Facts:** [2]

The [redacted] (the [redacted]) was incorporated as an Illinois not-for-profit corporation in [redacted]. The [redacted] was granted exemption from tax under I.R.C. § 501(c)(3) in [redacted], and is a "private foundation" as that term is defined in section 509(a).

In [redacted], following the death of [redacted], the trustee of the [redacted] distributed all of the stock of [redacted] ([redacted]) to the [redacted] upon the trust's termination. The stock of [redacted] was subject to the five-year disposition period provided under section 4943(c)(6). Accordingly, the [redacted] was required to divest itself of the stock on or before [redacted] (later extended by ruling to [redacted] in order to avoid the excess business holdings tax imposed by section 4943(a).

[redacted]'s complex corporate structure consisted of approximately [redacted] separate entities. These entities were engaged in diverse and unrelated activities including real estate development and management; utility company operations; hotel, motel, ranch, country club, and golf course operations; shopping centers and other activities, as well as multistate insurance operations. As of [redacted], [redacted] consisted of assets in excess of $[redacted], equity of more than $[redacted], and life insurance in force of more than $[redacted].

Almost immediately upon receipt of the [redacted] stock, the [redacted] engaged an international investment banking firm to develop a plan of divestiture. Later, the [redacted] engaged a second investment banking firm to act as agent along with the first firm in the divestiture of the various operations. The unrelated and incompatible nature of [redacted]'s operations depressed the market value of its stock. To address this problem, the investment banking firms advised the [redacted] to

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[2] The following factual account is drawn primarily from three sources: 1) the Form 886-A "Explanation of Items" attached to the proposed statutory notice; [redacted], PLR 85-08-114 (March 1, 1985); and [redacted], PLR 83-26-169 (July 1, 1983).

reorganize [redacted] to permit the [redacted] to sell [redacted]'s insurance operations separately from its other operations. Pursuant to this advice, the [redacted] caused [redacted] to adopt a plan of partial liquidation pursuant to section 346 wherein [redacted] would distribute its noninsurance assets to the [redacted]. The partial liquidation was carried out on [redacted]. Thereafter, [redacted] consisted mainly of an insurance operation.

The [redacted] distribution lowered the value of the [redacted] stock to $[redacted]. The [redacted] entered into negotiations with an unrelated party, [redacted], for the sale of [redacted]'s insurance operations. [redacted] refused to buy the [redacted] stock for the full $[redacted], because [redacted] owned assets worth $[redacted] which [redacted] did not care to acquire.[3] On [redacted], the [redacted] and [redacted] entered into a stock purchase agreement (the Agreement). The Agreement provided that [redacted] would buy the [redacted] stock for $[redacted]. The purchase was conditioned on the following events:

1) a presale distribution of the unwanted assets to the [redacted];

2) a postdistribution zeroing out of [redacted]'s adjusted surplus to be accomplished by the [redacted]'s either making a contribution to capital or causing [redacted] to distribute additional assets; and

3) [redacted]'s receipt of state regulatory approval for both the presale distribution of the unwanted assets and the postdistribution zeroing out of the adjusted surplus.

In addition, [redacted] agreed to provide [redacted] with surplus in such form and in such amount (up to a maximum of $[redacted]) as the Director of Insurance of the State of Illinois might require.

On [redacted], [redacted]'s Board of Directors resolved that [redacted] would distribute the unwanted assets to the [redacted] in the form of a dividend prior to the sale of the [redacted] stock to [redacted]. The Board further resolved that the declaration and payment of the dividend was conditional and that the declaration would confer no rights upon the [redacted] until the Director of Insurance of the State of Illinois had approved the distribution and the sale of the [redacted] stock to [redacted].

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[3] These assets consisted of notes (both secured and unsecured), bonds, real estate, "investments in and advances to subsidiaries", receivables, accrued interest, and oil and gas leases and equipment.

On [redacted], the Director of Insurance of the State of Illinois approved the presale distribution of the assets, the zeroing out of the accumulated surplus and the sale of the [redacted] stock. On [redacted], [redacted] distributed the unwanted assets worth $[redacted] to the [redacted] in the form of a dividend, and the [redacted] sold all of its [redacted] stock to [redacted] for $[redacted].

Analysis:

Issue 1. Whether the [redacted] distribution of a portion of the assets of [redacted] to its sole shareholder, the [redacted], constituted proceeds of the sale of the [redacted] stock to an unrelated party.

In general, section 301 controls a distribution "of property...by a corporation to a shareholder with respect to [the corporation's] stock." Section 301(a). The assets distributed by [redacted] -- consisting mainly of notes, bonds, real estate and receivables -- were "property" as that term is defined in section 317(a), since they were property other than stock of [redacted] or rights to acquire stock of [redacted]. Accordingly, the applicability of section 301 to the [redacted] distribution depends on whether or not the [redacted] received the assets in a distribution with respect to the [redacted] stock. If, in fact, the [redacted] received the assets as proceeds of the sale of the [redacted] stock to [redacted], then their receipt would result in realized gain to the extent of the difference between the [redacted]'s basis in the [redacted] stock and the fair market value of the assets received, pursuant to section 1001. Section 512(b)(5) would prevent this gain from resulting in unrelated business taxable income. Nonetheless, under section 4940, the [redacted] would be liable for an excise tax in the amount of 2% of the gain (i.e., 2% x $[redacted]) attributable to the [redacted]'s receipt of the assets. [4]

If the [redacted] received the assets in a dividend distribution under section 301(c), however, its excise tax liability would be significantly less than 2% of the $[redacted] fair market value of the assets distributed to the [redacted] on [redacted]. This is so, because [redacted] distributed

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[4] The [redacted] offset its adjusted basis in its [redacted] stock ($[redacted]) against a similar amount of the $[redacted] proceeds received from [redacted] on the sale of the stock. Accordingly, if we were to recharacterize the [redacted] distribution as proceeds of the sale of the [redacted] stock to [redacted], the full $[redacted] fair market value of the distributed assets would constitute gain to the [redacted].

appreciated assets to the [redacted], and section 301(b)(1)(b)(ii) would set the amount of any dividend at [redacted]'s adjusted basis in the distributed assets ($[redacted]), plus the amount of gain [redacted] recognized (if any) on the distribution. The [redacted] owned [redacted]% of the [redacted] stock. Assuming that the [redacted] distribution constituted a dividend distribution, the [redacted]'s basis in the distributed assets would be determined under section 301(d)(2)(B). Thus, the 1984 amendments to section 311(d) would not apply [5]. Accordingly, section 311(d)(2)(A) would prevent [redacted] from recognizing any gain on the distribution of its appreciated assets, and section 301(b)(1)(B)(ii) would limit the amount of the [redacted]'s dividend to $[redacted] ([redacted]'s adjusted basis in the distributed assets). This amount would be multiplied by 2% to arrive at [redacted]'s excise tax liability. See [redacted], PLR 81-38-031 (June 23, 1981).

You have cited Waterman Steamship Corporation v. Commissioner, 430 F.2d 1185 (5th Cir. 1970), rev'g 50 T.C. 650 (1968), cert. denied 401 U.S. 939 (1971), in support of the contention that the [redacted] distribution constituted proceeds of the sale of the [redacted] stock to [redacted]. Waterman Steamship is easily distinguished, however. In Waterman Steamship, parent corporation, P, owned all of the stock of subsidiaries, S1 and S2. Unrelated individual, A, wished to purchase all of the stock of S1 and S2. P's basis in the stock of S1 and S2 was $700,180. A offered P $3,500,000 for the stock of S1 and S2. P turned the offer down, because it wanted to avoid recognition of any gain. The parties agreed that S1 would distribute a $2,800,000 dividend to P. Then P would sell the subsidiaries' stock to A for $700,000. S1 and S2 did not have enough available cash to pay the dividend. Accordingly, S1 declared the dividend in the form of a $2,799,820 promissory note. Immediately following the declaration of the dividend, P sold the subsidiaries' stock to X, a corporation created by A. Next, A and X loaned S1 $2,799,820. S1 used the $2,799,820 to satisfy its "dividend obligation" to P.

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[5] Section 54(d)(1)(a) of the Tax Reform Act of 1984, Pub. L. 98-369, 98th Cong., 2d Sess. (1984), provides the general rule that the amendments to section 311(d) apply to distributions declared on or after June 14, 1984. Section 54(d)(3)(A) of the '84 TRA, however, provides a special effective date (January 1, 1985) for distributions to 80% corporate shareholders if the basis of the property distributed is determined by section 301(d). For distributions meeting the criterion of section 54(d)(3)(A), section 311(d) applies as in effect prior to the '84 TRA amendments.

The Tax Court held that the note that S1 transferred to P was a dividend and was not part of the purchase price of the stock. In reversing the Tax Court, the Fifth Circuit noted that:

> It is undisputed that Waterman [P] intended to sell the two subsidiaries for the original offering price--with $2,800,000 of the amount disguised as a dividend which would be eliminated from income under section 1502. Waterman also intended that none of the assets owned by the subsidiaries would be removed prior to the sale. Although the distribution was cast in the form of a dividend, the distribution was to be financed by McLean [A] with payment being paid to Waterman through Pan-Atlantic [S1]. To inject substance into the form of the transaction, Pan-Atlantic issued its note to Waterman before the closing agreement was signed.

Id., at p. 1194. Thus, in Waterman Steamship, the purchaser paid the purported dividend, and none of the assets of the two subsidiaries was removed and retained by the sellers.

In the present case, unlike Waterman Steamship, however, there is no evidence indicating that [redacted] was the source of the $[redacted] distribution to the [redacted]. The evidence indicates that [redacted] refused to pay for the $[redacted] unwanted assets and that the [redacted] removed the assets from [redacted] prior to the stock sale. Accordingly, an argument based on the Fifth Circuit's opinion in Waterman Steamship would probably not be well-received even by the Fifth Circuit. Furthermore, the present case would be appealable to an uncommitted circuit (the Seventh). Thus, even if the Tax Court did not perceive material distinctions between the present case and Waterman Steamship, the Court would be free to follow its own opinion in Waterman Steamship. In such an event, we would not recommend an appeal, because the facts do not present the Service's Waterman Steamship argument effectively.

Waterman Steamship is not the only existing precedent on the "dividend distribution v. sale proceeds" issue, however. In TSN Liquidating Corporation v. United States, 624 F.2d 1328 (5th Cir. 1980), parent corporation, P, owned over 90% of the stock of life insurance company, L. In 1969, P and the other stockholders of L entered into an agreement to sell all of the L stock to an unrelated life insurance company, U. The stock purchase agreement provided that as of the closing date of the sale, certain shares of stock and capital notes held by L would not be a part of L's assets. The purchase price of L's stock was based primarily upon the book value of L's assets on the closing date.

Thus, the purchase price would automatically be reduced by the removal of assets from L. On May 14, 1969, L's Board of Directors declared a dividend in kind consisting primarily of stock in small public companies traded infrequently and in small quantities in the over-the-counter market. The closing of the stock sale was held on May 20, 1969, with U purchasing all of L's stock. U paid $823,822 to the L shareholders for their shares of the stock of L. Immediately thereafter, U contributed $1,120,000 in municipal bonds to L's capital and purchased additional stock from L for $824,598.

P treated the distribution as a dividend subject to the 85% dividends received deduction of section 243(a)(1). The Service treated the distribution as additional sales proceeds. In rejecting the District Court's conclusion that the distribution constituted additional sales proceeds, the Fifth Circuit wrote:

> In summary, in Waterman, the substance of the transaction, and the way in which it was originally negotiated, was that the purchaser would pay $3,500,000 of its money to the seller in exchange for all the stock of the two subsidiaries and none of the assets of those subsidiaries was to be removed and retained by the sellers. In the case before the court, the district court found that Union Mutual [U] did not want and would not pay for the assets of CLIC [L] which were distributed to TSN [P] and the other stockholders of CLIC. Those assets were retained by the selling stockholders. The fact that bonds and cash were reinfused into CLIC after the closing, in lieu of the unwanted capital stock of small, publicly held corporations does not convert this case from a...situation, in which admittedly unwanted assets were distributed by the corporation to its shareholders and retained by them, into a Waterman situation, in which the distribution of assets was clearly a sham, designed solely to achieve a tax free distribution of assets ultimately funded by the purchaser.

Id., at p. 1328.

The Service responded to the Fifth Circuit's TSN opinion in TSN Liquidating Corporation v. United States, AOD CC-1981-39 (Oct. 28, 1980). The Service noted that while the distribution in TSN was necessary to complete the sale and, therefore, was not a sham, still, the distribution could not have been made without the buyer's reinfusion of capital. Despite this observation, the Service stated that, in the future, it would drop the sales

proceeds argument in favor of a section 346(a)(2) partial liquidation argument (discussed below) in cases similar to TSN. The Service decided to drop the sales proceeds argument in cases similar to TSN for the following reasons:

1) the Waterman Steamship line of cases was easily distinguishable;

2) the distribution of 78% of CLIC's assets brought about an effective dissolution of CLIC and was, thus, a corporate contraction, since the distribution represented virtually all of the insurance reserves and reduced CLIC's capital below the minimum required by insurance regulatory authorities of the states in which CLIC had previously operated.

Although TSN bears closer factual resemblance to the present case than Waterman Steamship does, TSN is also readily distinguishable. In the present case, unlike TSN, there is simply no evidence indicating that the buyer ever reinfused the subsidiary with needed capital or that the distribution could not have been made without such a reinfusion of capital. [6] Thus, if we were to adopt the Government's TSN litigating position in the present case, we would expect to meet two formidable hazards: 1) the Fifth Circuit's TSN opinion; and 2) the aforementioned lack of evidence. Our prospects for success in the face of these hazards would be dismal. Accordingly, we do not recommend basing a deficiency determination in the present case on a recast of the dividend distribution as sales proceeds.

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[6] In fact, the revenue agent's factual rendition indicates that state regulatory approval for both the presale distribution of the unwanted assets and the postdistribution zeroing out of the adjusted surplus was obtained prior to the distribution and sale. The revenue agent's account is silent on the question of whether or not state regulatory approval was conditioned on [redacted]s reinfusing [redacted] with some amount of surplus. Even if state regulatory approval was, in fact, conditioned on a reinfusion, the Service's action on decision in TSN would prevent us from adopting the TSN litigating position in the present case, because the facts would involve a corporate contraction.

Issue 2. Whether, absent an actual surrender of shares, the [redacted] distribution of a portion of the assets of [redacted] to its sole shareholder, the [redacted], constitutes a redemption of those shares pursuant to I.R.C. § 317(b).

Section 302(a) provides, in part, that if a corporate redemption results in either a termination of a shareholder's entire interest in the corporation's stock (302(b)(3)) or a partial liquidation of the distributing corporation (302(b)(4)), then the redemption will be treated as a distribution in part or full payment in exchange for the stock. Section 317(b) explains that a distribution will be treated as a redemption if the distributing corporation acquires its stock from a shareholder in exchange for property. As a threshold matter, section 317(b) presents an obstacle in characterizing the [redacted] distribution as a redemption, since the [redacted] parted with none of the [redacted] stock in the distribution transaction. If we can overcome this obstacle, however, the Commissioner would be able to assert the greater excise tax deficiency as outlined above in Issue 1.

In limited circumstances, the Service, the Tax Court and the Seventh Circuit have dispensed with the requirement of an actual surrender of shares to trigger a redemption. E.g., Fowler Hosiery Co., Inc. v. Commissioner, 301 F.2d 394 (7th Cir. 1962), aff'g 36 T.C. 201 (1961). In Fowler Hosiery, parent corporation, P, owned all of the stock of Canadian subsidiary, S. P and unrelated corporation, X, entered into an agreement whereby S would sell its inventory, prepaid expenses, accounts receivable, and goodwill to X. The sale closed in September of 1955, with S receiving $1,777,680.83 in cash from X. Simultaneously with the sale and pursuant to the agreement, S leased to X all of its fixed assets consisting of land, buildings, machinery and equipment. Neither the stockholders nor the directors of S took any action to dissolve S. After the sale, S engaged in no business other than the collection of rents from the lease of its fixed assets. In December of 1955, S declared and paid to P a dividend of $1.5 million. Prior to this payment, S had accumulated E&P of approximately $2.2 million. After the distribution, S had accumulated E&P of $700,000.

P reported the December distribution from S as a dividend. The Commissioner determined a deficiency on the grounds that the $1.5 million S had paid to P was received in partial liquidation of S, resulting in a long-term capital gain of $1.1 million. The Tax Court and the Seventh Circuit upheld the determination. Both Courts noted that P's failure to transfer any shares back to S was immaterial, since, as sole stockholder, P's interest in S would remain the same no matter whether it actually gave up S stock or not. 301 F.2d at p. 397, 36 T.C. at 221. See also

Rev. Rul. 81-3, 1981-1 C.B. 125; Rev. Rul. 79-257, 1979-2 C.B. 346.

The revenue agent has proposed extending the Fowler Hosiery constructive redemption theory beyond distributions in partial liquidation. He proposes to step the [redacted] distribution together with the sale of the [redacted] stock to [redacted], and to recast the transaction as a sale by the [redacted] of a portion of the [redacted] stock to [redacted], coupled with [redacted]'s redemption of the [redacted]'s remaining interest in the stock of [redacted] within the scope of section 302(b)(3).

The Service has limited the Fowler Hosiery constructive redemption theory to the partial liquidation context, however. In Motor Finance Corp., OM 17,838, I-3442 (April 3, 1973) [copy attached], the Interpretative Division discussed the efficacy of arguing that a redemption subject to section 302(b)(3) had occurred absent an actual surrender of stock. Therein, the parent corporation, P, owned all of the stock of two subsidiaries, S1 and S2. S1 bought conditional sales contracts and accounts receivable from automobile dealerships and sold them to P for a commission. S2 sold insurance coverage on the lives of purchasers of automobiles. In 1962, P entered into agreements for the sale of the S1 and S2 stock to unrelated corporations. These agreements contemplated that the subsidiaries' earned surplus would be distributed to P as dividends prior to the consummation of the stock sales. The agreements were carried out according to their terms. P reported the distributions of the earned surplus as dividend distributions subject to the 85% dividends received deduction of section 243(b). The Government defended an eventual refund suit on various grounds, including an asserted constructive redemption in complete termination of P's interest in the subsidiaries.

The United States District Court for the District of New Jersey rejected the Government's arguments and held for P. In reassessing earlier advice given, the Interpretative Division concluded that the Service should not assert the constructive redemption theory for the following reasons:

1) Because of the absence of an actual surrender by P of the shares of S1 and S2, a redemption argument would be inconsistent with Treas. Reg. § 1.311-2(a)(2) which requires an actual redemption of stock [7];

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[7] Treas. Reg. § 1.311-2(a)(2)'s requirement of an actual surrender of shares of the distributing corporation did not survive the TEFRA amendments. See S. Rep. No. 97-530, 97th Cong., 2nd Sess. (Aug. 17, 1982), p. 529.

2) The constructive redemption argument conflicted with Service position as expressed in Rev. Rul. 70-172, 1970-1 C.B. 77 and Rev. Rul. 70-434, 1970-2 C.B. 83; and

3) The constructive redemption argument conflicted with the Service's position in several previously litigated cases. See Casner v. Commissioner, 450 F.2d 379 (5th Cir. 1971), rev'g. in part T.C.Memo. 1969-98; Steel Improvement and Forge Co., Inc. v. Commissioner, 36 T.C. 265 (1961), rev'd., 314 F.2d 96 (6th Cir. 1963); Miller v. Commissioner, 26 T.C. 151 (1956), rev'd., 247 F.2d 206 (7th Cir. 1957), cert. denied, 355 U.S. 939 (1958); Gilmore v. Commissioner, 25 T.C. 1321 (1956); Coffey v. Commissioner, 14 T.C. 1410 (1950).

In addition to the reasons expressed in OM [redacted], there is another reason for limiting the constructive redemption theory of Fowler Hosiery to the partial liquidation context. There may be no basis in substance for differentiating between a dividend and a redemption in a case involving a sole shareholder, since the shareholder's rights would generally remain unaffected, regardless of whether shares of stock were surrendered or not. There is a more easily perceptible basis in substance for differentiating between a dividend distribution and a distribution in partial liquidation, however, since a partial liquidation involves a corporate contraction. To ignore a corporate contraction and accord the taxpayer dividend treatment simply because no shares had been surrendered would be to exalt form over substance. Applying Fowler outside of the corporate contraction context would introduce uncertainty into dividend distributions to a sole shareholder.

Since O.M. [redacted] indicates that the Fowler Hosiery constructive redemption theory is limited to the partial liquidation context, the next logical step in the analysis would be to determine whether or not the [redacted] distribution resulted in a partial liquidation of [redacted].[8] Even if there were evidence of a partial liquidation, however, as your

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[8] Focusing solely on the nature of the assets distributed, it seems unlikely that any significant portion of the [redacted] distribution constituted a partial liquidation of [redacted] within the scope of section 302(e), since mostly passive assets were distributed. See Rev. Rul. 79-275, 1979-2 C.B. 137; Rev. Rul. 76-526, 1976-2 C.B. 101. Turning our focus to the amount of the assets distributed and the distribution's effect on [redacted] (see TSN Liquidating Corporation v. United States, AOD CC-1981-39 (Oct. 28, 1980)), the facts do not indicate that the distribution reduced [redacted]'s capital below the minimum required by the insurance regulatory authorities of the states in which Bankers Life operated.

request acknowledges, section 222(c)(1) and (c)(2) of TEFRA eliminated exchange treatment for asset distributions to corporate shareholders in a partial liquidation and thereby limited the relevance of the Fowler Hosiery constructive redemption theory to distributions to noncorporate shareholders in partial liquidation. See S. Rept. No. 97-530, 97th Cong., 2d Sess. (1982), at p. 530. Since the Foundation is a corporate shareholder, application of the Fowler Hosiery constructive redemption theory would have no effect in the present case. Accordingly, we do not recommend basing a deficiency determination in the present case on a constructive redemption.

## CONCLUSION

The present case is readily distinguishable from Waterman Steamship and TSN Liquidating Corporation, since there is no evidence that [redacted] either funded the [redacted] distribution or reinfused [redacted] with necessary assets. The facts of the instant case simply do not present the Service's Waterman Steamship argument effectively. Accordingly, we would not recommend the determination of a deficiency in the present case based on a recast of the [redacted] distribution as proceeds of the sale of the [redacted] stock.

In addition, in Motor Finance Corp., OM [redacted], I-3442 (April 3, 1973), the Interpretative Division concluded that the Service should not assert the constructive redemption theory in a section 302(b)(3) complete termination of interest context. AOD CC-1981-39 states that the Service will argue constructive redemption theory in the partial liquidation context, however. Nonetheless, Congress rendered this argument moot when it enacted section 222(c)(1) and (c)(2) of TEFRA. TEFRA eliminated exchange treatment for asset distributions to corporate shareholders in a partial liquidation and limited the relevance of the Fowler Hosiery constructive redemption theory to distributions to noncorporate shareholders in partial liquidation. Since the [redacted] is a corporate shareholder, constructive redemption theory does not apply in the present case. Accordingly, we would not recommend basing a deficiency determination in the present case on a constructive redemption. Finally, we note that our conclusion --that the [redacted] distribution constituted a dividend --will have an effect on items not considered herein

(e.g., basis and holding periods). These items should be treated consistently with our conclusion.

**MARLENE GROSS**

By: Judith M. Wall
JUDITH M. WALL
Senior Technician Reviewer
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Attachment:
OM [redacted] (Do not disclose outside of Chief Counsel)